IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 382 OF 2006

1. Prataprao Bhausaheb Bhosale & ors.] .. Petitioners

Versus

1. Mumbai Municipal Corporation & ors.] .. Respondents

Mr. R.M. Joshi with P.S. Chavan for the petitioners.

Ms. Trupti H. Puranik for the respondents.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 14TH MARCH, 2006

P.C. :

. Petitioners have prayed for fixation of seniority and consequential promotion to the post of Assistant Divisional Fire Officer. They have also challenged the order of promotion dated 31st October, 2005, issued by the respondents - Chief Fire Officer, Mumbai Fire Brigade in favour of their purported juniors with effect from 1st November, 2005. The impugned order of promotion also depends upon the final orders of the High Court in Writ Petition No.8452 of 2004 and 1601 of 2005 at stages of the reservations. The persons whose seniority is likely to be effected are not joined as

parties.

2. Respondent No.1 is a Mumbai Municipal Corporation, a statutory body constituted under the Mumbai Municipal Corporation Act [for short MMC Act]. Respondent No.2 is the Chief Fire Officer of Mumbai Fire Brigade, a department of Respondent No.1. The petitioners have been governed by the Service Regulations & Circulars issued by the Respondents.

3. Petitioners are presently working as Station Officer on promotion. Petitioner No.1 had joined service of respondents on 16th February, 1989 and petitioners No.2 and 3 on 10th April, 1989, as Assistant Station Officers. They have been promoted as Station Officer since 10th December, 1999, as they obtained Diploma in Fire Station course in the year 1993.

4. As per Affidavit in reply of the respondents, petitioners could not be sent for the course prior to 1999 as petitioners were not qualified for the course of Station Officer conducted by NFSC, Nagpur for want of sub-officers course passing Certificate. The said condition was relaxed in the year 1998. Therefore, petitioners were sent accordingly.

5. In the meantime, the other Officers, junior to the petitioners in the post of Assistant Station Officer had obtained the equivalent degree from Private Institutions of Fire Engineer (India) at their own cost, which was permissible under the Rules. Those juniors, therefore, were promoted to the post of Station Officers in the year 1996 itself. Some were promoted on ad-hoc basis in the year 1997. Those promotees are not made party to this Petition.

6. Respondents have not promoted the petitioners as Assistant Divisional Fire Officers as they were admittedly not possessing requisite qualification as per the Rules at the relevant time. The promotion is based on the seniority, as well as, the requisite qualifications in the feeder post of Station Officers.

7. First let us consider the cse of promotion to the post of Station Officer. For promoting to that post, it is essential that those seeking to be promoted have to possess the qualification in terms of the recruitment rules. In the instant case, for the post of Station Officer, it was essential that the candidate possessed a diploma of the institute of Fire Engineers (India) or diploma of Station Officers Course from National Fire Services College, Nagpur. In terms of the

rules, as existing from the year 1984 onwards, it was not necessary that the diploma had to be of the National Fire Services College only. The candidates who were selected to the post of Station Officer were those earlier holding the post of Assistant Station Officer but who had requisite qualifications. The petitioners cannot contend that because they were not sent for training, those others who had become eligible and qualified, could not have been considered for promotion. The petitioners like them could have also obtained the necessary diploma from the institute other than National Fire Services College, Nagpur. The petitioners obtained that diploma some time in the year 1999. The petitioners, therefore, cannot in the year 2006, challenge the promotion of the other officers.

. The challenge must fail on two counts. Firstly, as other officers who were promoted as Station Officers, are not before this court and secondly, the seniority has to be considered for the next higher promotion and that would be the seniority for the post of Station Officers. The grievance of the petitioners is against the persons who were appointed in the year 1996. The seniority has to be counted from the date of entry in the cadre of Station Officers. Those persons therefore, who were appointed in the year 1996 would be

senior to those who were appointed in the year 1999. That challenge otherwise, also cannot be considered as they are not before this court. Therefore, on both the counts, both on merits as well as non-joinder of necessary parties, this Petition must fail and is accordingly disposed of.

8. We find no merit in the Petition. It is dismissed in limine. No order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]